MISTAKE OF LAW IN NEW YORK.—To what extent may relief be had in New York from injury due to a mistake of law? The decisions may be roughly divided into three classes: (1) recovery of money paid; (2) reformation; (3) rescission. That there may be no recovery either at law[1] or in equity[2] for money paid under mistake of law is well settled. The unsoundness of the reasons for this rule have been clearly set out many times.[3] The excuses used by the New York courts to avoid extending it show that they have recognized its unfairness. Where money has been paid to a receiver under mistake of law, recovery was allowed upon the ground that he was an officer of the court.[4] For the same reason costs paid by a defendant to the plaintiff's attorney were held recoverable by that defendant.[5] Where a non-resident had paid money under mistake of New York law, he was allowed to recover.[6] Similarly, where a

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[1] *Payne* v. *Witherbee, Sherman & Co.* (1911) 200 N. Y. 572, 93 N. E. 954; *Belloff* v. *Dime Savings Bank* (1907) 118 App. Div. 20, 103 N. Y. Supp. 273, *aff'd* (1908) 191 N. Y. 551, 85 N. E. 1106; *Newburgh Savings Bank* v. *Town of Woodbury* (1903) 173 N. Y. 55, 65 N. E. 858; *Vanderbeck* v. *City of Rochester* (1890) 122 N. Y. 285, 25 N. E. 408; *cf. Flynn* v. *Hurd* (1899) 118 N. Y. 19, 22 N. E. 1109 (money not paid to the defendant but to discharge the defendant's duty). In *Doll* v. *Earle* (1874) 59 N. Y. 638, the plaintiff and defendant entered into an agreement whereby the plaintiff paid off a mortgage in legal tender. The difference between the amount of principal and interest in gold and in legal tender was deposited in a bank to be held to await the decision of the United States Supreme Court on the Legal Tender Act. The Supreme Court held that the Act was unconstitutional as to contracts executed prior to its passage. Accordingly, the plaintiff gave the defendant an order for the money. Later the Supreme Court decided that the Act was constitutional as to prior contracts. The plaintiff sought to recover the money paid. Relief was denied. This case seems correct regardless which view is taken as to the mistake of law doctrine. Was the money in reality paid under a mistake of law? What was the law when the plaintiff gave the defendant the order for the money? To allow recovery when the Supreme Court reversed its decision, would open the door for enormous litigation whenever any decision is overruled.

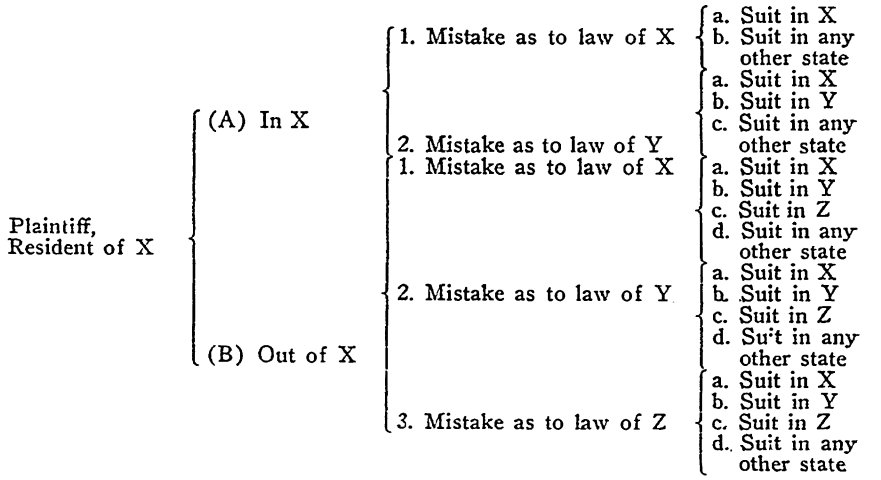
[2] *Knickerbocker Trust Co.* v. *O. C. & R. S. Ry.* (1910) 138 App. Div. 687, 123 N. Y. Supp. 822, *aff'd* (1911) 201 N. Y. 379, 94 N. E. 871.

[3] Woodward, *Quasi-Contracts* (1913) § 36; *Keener, Quasi-Contracts* (1893) 85 *et seq.*

[4] *Gillig* v. *Grant* (1897) 23 App. Div. 596, 49 N. Y. Supp. 78.

[5] *Ex parte Moulton* v. *Bennett* (N. Y. 1836) 18 Wend. 586.

[6] *Bank of Chillicothe* v. *Dodge* (N. Y. 1850) 8 Barb. 233. The problems raised by this decision are indicated by a diagram suggested by Professor Walter Wheeler Cook of the Columbia Law School:



resident of New York makes a mistake as to the law of another state, recovery might be allowed because the law of any other state is treated as a question of fact in New York.[7]

Where the parties in reducing an oral agreement to writing make a mutual mistake of law so that the written instrument does not embody the oral agreement, equity will grant reformation.[8] It has been suggested by way of dictum that if there has been no previous oral contract, and a certain instrument has been adopted which does not effectuate the intention of the parties, reformation will be denied.[9] As to whether relief should be granted for unilateral mistake, this distinction has an important bearing. Where there has been a valid oral contract, it is no hardship on the defendant to reform the written instrument in the case of an unilateral mistake. However, the same reasons would not apply to reforming a written contract where there has been no prior oral one. Here, the court would be forcing a contract upon the defendant to which he

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In cases (A) 1, a and b there would be no recovery. In (A) 2, a, b and c the plaintiff could recover. There is no answer to the rest of the cases, but as the courts seek to limit the rule denying recovery, they would probably seize upon every chance to grant it.

[7] *Hanna* v. *Lichtenhein* (1919) 225 N. Y. 579, 122 N. E. 625.

Kelly v. *Connecticut Mut. Life Ins. Co.* (1898) 27 App. Div. 336, 50 N. Y. Supp. 139, puts an interesting restriction on the general rule. The plaintiff had as executor for the insured collected the amount of a policy payable to the testator's legal representatives from the defendant, and distributed it among the creditors of the estate. At the time he knew that there was a previous policy payable to him personally for which the policy on which he collected was substituted. He did not know that because of a rule of law the first policy remained in full effect. In an action on the first policy, *held,* that the plaintiff could not recover. Logically, upon strict legal theory it is difficult to sustain the decision. The first policy was valid and remained unpaid. On this the plaintiff under ordinary circumstances had a good cause of action. It is hard to see how the defendant could prevent recovery by setting up payment under mistake of law on the second policy. There is no valid counterclaim as the defendant had no cause of action. However, on grounds of fairness, the result is correct.

[8] *Myer* v. *Idlewood Ass'n* (Sup. Ct. 1914) 146 N. Y. Supp. 370; *Boscot* v. *Fessenden* (1910) 139 App. Div. 647, 124 N. Y. Supp. 370; *Maher* v. *Hibernia Ins. Co.* (1876) 67 N. Y. 283; *Pitcher* v. *Hennessey* (1872) 48 N. Y. 415. In all these cases the question arises whether the mistake was one of the meaning of the English language or one of the legal effect given to the words. If the mistake is as to the meaning of the language it is one of fact, although the court always passes on the interpretation of words in a written contract. Some courts, however, have treated such mistake as one of law. *Sibert* v. *McAvoy* (1853) 15 Ill. 106, 109. In such a case the reason for denying recovery for mistake of law, *i. e.,* "everyone is presumed to know the law," does not apply. Everyone is not presumed to know the meaning of the English language.

There are some cases which have been cited as contrary to the general rule allowing reformation of an instrument which because of mistake of law does not carry out the parties' intention. Among these, *Moran* v. *Wellington* (1917) 101 Misc. 594, 167 N. Y. Supp. 465, denied relief in the case of a release. This case may be put under a recognized exception to the general rule. All previous transactions except as to consideration are regarded as merged in a deed. *Whittemore* v. *Farrington* (1879) 76 N. Y. 452. This doctrine has been extended to the case of a lease and the decision would have been the same if the mistake had been one of fact.

In *Western Union Telegraph Co.* v. *Shepard* (1900) 49 App. Div. 345, 63 N. Y. Supp. 435, *reversed* (1901) 169 N. Y. 170, 62 N. E. 154, the mistake was as to the legal effect of certain language used in a deed. The Appellate Division granted reformation on the ground that the mistake was one of law. The Court of Appeals reversed this decision granting other relief and denying reformation as it was not necessary.

[9] See *Pitcher* v. *Hennessey, supra,* footnote 8, pp. 423, 424.

never assented.[10] Where the question has arisen under mistake of fact, this distinction has been followed in granting reformation for a unilateral mistake.[11] While no cases in point under unilateral mistake of law have been found, there is no reason why the same rule should not be followed. However, where the mistake is mutual, no sound basis for the difference in result exists. In both cases reformation would merely compel the defendant to do what he reasonably expected to do. The distinction is not upheld by the decisions,[12] but it is important to note the dictum which suggests it as it may lead to erroneous results.[13] Of course if the mistake of law was not as to the legal effect of the instrument but was a mistake which induced the parties to enter into the agreement, there is no prior intended agreement with which a decree for reformation could conform and hence reformation is denied.[14]

Here an interesting problem may be raised. To what extent will a court of law allow recovery of money paid under a contract which could have been reformed in equity? Originally, where the question arose under mistake of fact, recovery was denied upon the ground that to allow it would be a violation of the parol evidence rule.[15] After the adoption of the code, however, the rule was changed.[16] No cases where the problem has arisen under mistake of law have been found. What will be decided is mere matter of conjecture. There is the well settled rule that there can be no recovery for money paid under mistake of law. But, on the other hand, this is an excellent opportunity of escape from the much reviled rule denying relief.

The next cases to be considered are those of rescission. First let us take up rescission at law. Suppose A and B because of a mutual mistake of law, which is the sole inducement, enter into a contract for the sale of certain apples. A delivers the apples and B pays. Upon discovering the mistake A tenders back the money and demands the apples, but B refuses. Can A recover in an action of trover? No cases under either mistake of law or fact have been found.[17] However, in view of the rule against recovery of money paid under mistake of law, probably no recovery will be allowed in this case.

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[10] This raises the interesting problem as to whether or not reformation should be granted. To allow reformation for unilateral mistake where there is no prior oral contract would change our system of contracts from an objective to a subjective one. Under the common law system, you can rely on reasonable appearances which the other party creates and thus know when you have made a contract. Under the subjective system you could never know. While most courts have denied reformation, there are a few which have allowed it. *St. Nicholas Church* v. *Kropp* (1916) 135 Minn. 115, 160 N. W. 500; *Brown* v. *Lamphear* (1862) 35 Vt. 252.

[11] *Born* v. *Schrenkeisen* (1888) 110 N. Y. 55, 59, 17 N. E. 339. The mistake here was in the meaning of language and might be considered a mistake of law.

[12] *Baird* v. *Erie R. R.* (1911) 148 App. Div. 452, 132 N. Y. Supp. 971; *Maher* v. *Hibernia Ins. Co., supra,* footnote 8.

[13] See *Wemple* v. *Haunstein* (1897) 19 App. Div. 552, 557, 46 N. Y. Supp. 288.

[14] *Green* v. *Smith* (1899) 13 App. Div. 459, 43 N. Y. Supp. 610, *aff'd* (1899) 160 N. Y. 533, 55 N. E. 210. In an agreement between A and B, the written instrument provided that B was to have interest. There was an understanding between the parties that 8% was to be allowed, but because both mistakenly thought that this rate was usurious and would render the contract invalid, it was omitted. A assigned to C. In an action by C, B set up a counterclaim requesting reformation, which was denied. The mistake in this case was not as to the legal effect of the contract. The only mistake was as to a rule of law which caused them to make a different contract than they would have if they had known the true rule.

[15] *Howes* v. *Barker* (N. Y. 1808) 3 Johns. 506.

[16] *Wilson* v. *Randall* (1876) 67 N. Y. 338 (*semble*).

[17] Relief of this sort should be allowed where the defendant makes a fraudulent misrepresentation. *Cf. Pickney* v. *Darling* (1896) 3 App. Div. 553, 557, 38 N. Y. Supp. 411, *aff'd* (1899) 158 N. Y. 728, 53 N. E. 1130.

But in equity, there are many dicta to the effect that relief will be denied for a mistake of law.[18] Still, in most of the cases which have arisen, the courts have found some extenuating circumstance upon which to base rescission. Where the parties because of a mistake as to who was entitled to a lapsed legacy, entered into an agreement whereby the plaintiff was to release the defendant for a given consideration, and before the release was actually given the defendant learned of the mistake but said nothing, the court said that the plaintiff was entitled to a cancellation of the release.[19] Again, where the defendants' agents told the plaintiff that he had no insurable interest in certain hay, there being no fraud, and the plaintiff believing him released the defendants as to the interest in the hay, the release was cancelled and the plaintiff was allowed to recover for the loss of the hay.[20] So in the recent case of *Ryon* v. *John Wanamaker, New York, Inc.* (Sup. Ct. 1921) 116 Misc. 91, 190 N. Y. Supp. 250, the court granted relief. The plaintiff's wife had incurred an indebtedness in her own name at the defendant's store of $16,000 in three months. The defendant's credit agent told the plaintiff that he was responsible for his wife's debts. Believing this, the plaintiff assigned to the defendant certain mortgages. These mortgages were all that remained of the plaintiff's property already depleted by his unscrupulous wife. The court found that there was no fraud. In an action to set aside the assignments, *held,* for the plaintiff. This was a case of an innocent misrepresentation of law which led to a mutual mistake. The decision is interesting in comparison with the rule with regard to an innocent misrepresentation of fact. In the latter cases, New York has gone very far in allowing rescission.[21] This rule has thus apparently been extended to cover innocent misrepresentation of law at least where the hardship to the plaintiff is manifest. It should be noticed that in many cases of mutual mistake there has been an innocent misrepresentation by one of the parties. The fact that the defendant innocently misrepresented the law has never been taken as a basis for recovery of money paid, probably because the point has never been urged upon the court. As the cases stand, there is an inconsistency. If the plaintiff seeks to recover property other than money, as in *Ryon* v. *John Wanamaker, New York, Inc.,* he succeeds, but if to recover money, he fails.

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[18] See *Hudson* v. *Glens Falls Ins. Co.* (1916) 218 N. Y. 133, 139, 112 N. E. 728; see *Haviland* v. *Willets* (1894) 141 N. Y. 35, 50, 35 N. E. 958; *Donaldson* v. *Supreme Council, Catholic B. Legion* (Sup. Ct. 1920) 180 N. Y. Supp. 598, 601; *Berry* v. *American Central Ins. Co.* (1892) 132 N. Y. 49, 54, 30 N. E. 254.

[19] *Haviland* v. *Willets, supra,* footnote 18, p. 50.

[20] *Hudson* v. *Glens Falls Ins. Co., supra,* footnote 18. To the same effect is *Berry* v. *American Central Ins. Co., supra,* footnote 18.

[21] *Canadian Agency, Ltd.* v. *Assets Realization Co.* (1914) 165 App. Div. 96, 150 N. Y. Supp. 758. The plaintiffs were purchasers of certain corporate stock from the defendants. Before buying, the plaintiff had made inquiries of the defendants concerning the financial condition of the company. The representations made by the defendants were untrue, but there was no allegation or proof that the defendants knew this. When the plaintiffs learned of the falsity of the representations, they offered to return the stock, and demanded their money back. The defendants refused. The court granted rescission. *Silverman* v. *Minsky* (1905) 109 App. Div. 1, 95 N. Y. Supp. 661.